

WORKFORCE DEVELOPMENT

Budget Summary							
Fund	2014-15 Base Year Doubled	2015-17 Governor	2015-17 Jt. Finance	2015-17 Legislature	2015-17 Act 55	Act 55 Change Over Base Year Doubled	
						Amount	Percent
GPR	\$95,719,200	\$86,669,400	\$87,188,400	\$87,188,400	\$87,188,400	- \$8,530,800	- 8.9%
FED	431,919,200	427,198,600	421,599,000	421,599,000	421,599,000	- 10,320,200	- 2.4
PR	151,431,400	153,047,600	153,355,800	153,355,800	153,355,800	1,924,400	1.3
SEG	<u>62,146,600</u>	<u>1,742,000</u>	<u>60,032,400</u>	<u>60,032,400</u>	<u>60,032,400</u>	<u>- 2,114,200</u>	<u>- 3.4</u>
TOTAL	\$741,216,400	\$668,657,600	\$722,175,600	\$722,175,600	\$722,175,600	- \$19,040,800	- 2.6%

FTE Position Summary						
Fund	2014-15 Base	2016-17 Governor	2016-17 Jt. Finance	2016-17 Legislature	2016-17 Act 55	Act 55 Change Over 2014-15 Base
GPR	148.38	148.17	146.87	146.87	146.87	- 1.51
FED	1,270.67	1,184.63	1,164.13	1,164.13	1,164.13	- 106.54
PR	252.71	238.55	240.25	240.25	240.25	- 12.46
SEG	<u>108.00</u>	<u>4.70</u>	<u>67.30</u>	<u>67.30</u>	<u>67.30</u>	<u>- 40.70</u>
TOTAL	1,779.76	1,576.05	1,618.55	1,618.55	1,618.55	- 161.21

Budget Change Items

Departmentwide

1. STANDARD BUDGET ADJUSTMENTS

Governor/Legislature: Adjust the agency's base budget by deleting \$1,374,700 and 69.0 positions in 2015-16, and deleting \$2,603,200 with 84.0 positions in 2016-17. The adjustments are for: (a) turnover reduction (-\$220,300 GPR, -\$1,619,800 FED, -\$471,900 PR, and -\$160,500 SEG annually); (b) removal of noncontinuing elements from the base (-\$14,100 GPR and -0.21 GPR positions annually, -\$2,144,800 FED and -68.79 FED positions in 2015-16, -\$3,373,300 FED

	Funding	Positions
GPR	- \$431,400	- 0.21
FED	- 6,319,700	- 83.79
PR	2,044,200	0.00
SEG	<u>729,000</u>	<u>0.00</u>
Total	- \$3,977,900	- 84.00

and -83.79 FED positions in 2016-17, -\$100 PR annually); (c) full funding of continuing position salaries and fringe benefits (\$18,700 GPR, \$1,219,000 FED, \$1,339,900 PR, \$525,000 SEG annually); (d) overtime (\$154,200 PR annually), and (e) minor transfers within the same appropriation. The reduction of 84.0 positions relates to the expiration of primarily federally funded project positions, including unemployment administration, employment assistance, and workforce investment positions.

2. WISCONSIN FAST FORWARD [LFB Paper 730]

GPR	\$6,000,000
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Governor: Transfer \$3,000,000 annually to DWD, and provide authority to administer a career and technical education incentive grants program.

Under current law, the Department of Public Instruction (DPI) administers a career and technical education incentive grants program that provides awards to school districts in the amount of \$1,000 for each pupil in the school district who, in the prior school year, obtained a high school diploma in the district and successfully completed an industry-recognized certification program approved by DPI. The bill would eliminate this grant program (funded at \$3.0 million GPR in 2014-15 under DPI) and add language to DWD's workforce training (known as "Wisconsin Fast Forward") grant appropriation to include funding for a career and technical education incentive grant program and allow DWD to provide grants to school districts for the development of programs that are designed to mitigate workforce shortages in industries and occupations that are experiencing a workforce shortage, as determined by DWD, and to assist pupils in graduating with industry-recognized certifications in those industries and occupations.

Further, modify DWD's workforce training program appropriation to include two previously separate DWD appropriations: local youth apprenticeship grants and apprenticeship completion awards. Delete the youth apprenticeship training grants program that began in 1991, as funding was last received in the 1997-1999 biennial budget.

Modify the provision regarding eligible uses for Wisconsin Fast Forward workforce training grants to include the hiring and training of apprentices in Wisconsin. DWD would be instructed to report annually on the number of participating apprentices, those that obtained gainful employment or received increased compensation, and the total wages earned by those apprentices both before and after participating in the program.

Under the bill, funding for the expanded Fast Forward grant program would be provided as follows:

	2014-15	Governor	
	<u>Base</u>	<u>2015-16</u>	<u>2016-17</u>
Career and Technical Education Incentive Grant (DPI)	\$3,000,000	\$0	\$0
Wisconsin Fast Forward Grants	7,500,000*	12,858,700	12,858,700
Apprenticeship Completion Awards	225,000		
Local youth Apprenticeship Grants	2,233,700		
Youth Apprenticeship Training Grants	<u>0</u>	<u> </u>	<u> </u>
Total	\$12,958,700	\$12,858,700	\$12,858,700

*\$10.0 million was appropriated for Fast Forward in FY15 but \$2.5 million was designated as one-time funding under 2013 Act 139.

Under the bill, funding allocated to the DWD workforce training program administration appropriation, which includes amounts for the administration of the Fast Forward grant program and amounts for the development and maintenance of a labor market information system, would increase \$100,000 GPR annually (shifted from the Fast Forward grant appropriation), to \$3,274,400 in each year with 4.0 positions.

Joint Finance/Legislature: Modify the Governor's recommendation to require DWD to make awards of at least \$3 million annually to school districts based on current criterion (\$1,000 per pupil for those students that obtained a diploma from a district school and successfully completed an industry-recognized certification program).

Specify that DWD annually confer with the Department of Public Instruction and the Wisconsin Technical College System to identify industries and occupations within this state that face workforce shortages or shortages of adequately trained, entry-level workers. Further, specify that the State Superintendent of Public Instruction annually notify school districts of the identified industries and occupations and make this information available on the internet site of the Department of Public Instruction.

Specify that the administration of DWD's fast forward grants and career and technical education incentive grant program be funded from the Department's workforce training program administration appropriation.

Retain Local Youth Apprenticeships and Apprenticeship Completion Awards as separate appropriations at current base funding levels (as shown in the following table).

As modified, funding would be provided as follows:

	2014-15	Act 55	
	Base	2015-16	2016-17
DPI Career and Tech. Ed. Incentive Grant	\$3,000,000	\$0	\$0
Wisconsin Fast Forward grants and services*	7,500,000	10,400,000	10,400,000
Apprenticeship Completion Awards	225,000	225,000	225,000
Local Youth Apprenticeships	<u>2,233,700</u>	<u>2,233,700</u>	<u>2,233,700</u>
Total	\$12,958,700	\$12,858,700	\$12,858,700

*FY16 and FY17 amounts include the \$3,000,000 annual allocation for Career and Technical Education Incentive Grants to be administered by DWD.

[Act 55 Sections: 727b, 727d, 730, 1421, 3081d, 3082 thru 3090, 3193b, 3193bc, 3193be, 3193bg, and 3193bi]

3. **TRANSFER INDEPENDENT LIVING GRANT FUNDING TO DHS** [LFB Paper 731]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	- \$68,400	\$0	- \$68,400
FED	<u>- 1,797,400</u>	<u>- 1,200,000</u>	<u>- 2,997,400</u>
Total	<u>- \$1,865,800</u>	<u>- \$1,200,000</u>	<u>- \$3,065,800</u>

Governor: Transfer \$34,200 GPR and \$898,700 FED annually to reflect the shift of funding to administer independent living services from DWD's Division of Vocational Rehabilitation (DVR). Further, eliminate the Department's obligation to award grants to state independent living centers (ILC). The responsibilities for the administration of the federal ILC grants would move to the Department of Health Services (DHS).

Under current law, DVR assists individuals with disabilities in gaining employment through its vocational rehabilitation program, which is funded through a combination of federal and state matching funds. In addition, DVR receives moneys from the federal government as reimbursement for the fact that individuals who gain employment with vocational rehabilitation services no longer receive certain benefits from social security. The bill would repeal the provision which directs DWD to allocate, in each fiscal year, \$600,000 of moneys received from the social security administration to provide ILC grants and, instead, transfer \$600,000 in each fiscal year to DHS from DWD's federal appropriation for vocational rehabilitation services.

Currently, both DHS and DWD are budgeted funding to support ILC's providing nonresidential services to severely disabled individuals. Under the bill, all grant funding would be budgeted in DHS, which would administer the program.

Joint Finance/Legislature: Adopt the Governor's recommendation, as corrected by the administration, to transfer an additional \$600,000 FED annually for independent living services from DWD to DHS. Further, specify that DHS make grants to both independent living centers and independent living services.

[Act 55 Sections: 703h, 1644w, and 1645c]

4. TRANSFER VETERANS GRANT PROGRAM TO DVA [LFB Paper 701]

SEG	- \$1,000,000
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Governor/Legislature: Transfer \$500,000 SEG annually and DWD's responsibility to administer and award veteran employment grants to the Department of Veterans Affairs (DVA). Under the program, employers can receive up to a total of \$10,000 in funding over a four year period when they hire a qualifying veteran full-time, and up to \$5,000 for part-time. DWD's appropriation, funded with revenues from the Veterans Trust Fund to support the program, would be transferred to DVA.

[Act 55 Sections: 734 and 3097 thru 3103]

5. TRANSFER VETERANS EMPLOYMENT PROGRAMS TO DVA [LFB Paper 732]

Governor: Modify a provision of 2013 Act 20 that would have transferred two federally-funded veterans employment programs (disabled veterans' outreach program and local veterans' employment representative program) from DWD to DVA, contingent on the approval of the U.S. Department of Labor (DOL), to make this transfer, instead, contingent on the approval of the Governor. If the Governor approves the plan, require the Governor to declare DVA to be the primary coordinator of the employment service delivery system, meaning a service delivery system where labor exchange services, including employment, training, and placement services, are offered in accordance with the federal Wagner-Peyser Act.

Under 2013 Act 20, DWD and DVA were required to jointly prepare a plan for transfer of the administration of the disabled veterans' outreach program and the local veterans' employment representative program from DWD to DVA and were required to submit that plan to the DOL Secretary for approval. The act also stated that if the DOL Secretary were to approve the plan, administration of those programs would be transferred from DWD to DVA. The U.S. Department of Labor did not approve the transfer of these programs as proposed by Act 20.

Expand the statutory scope of DVAs training and employment functions by requiring DVA to operate programs in the state to enhance the employment opportunities of veterans of the U.S. armed forces, including federally funded employment and training programs for veterans. The bill states that such programs be administered by state employees and shall provide service only to eligible individuals.

Modify a statutory provision that expresses the state's policy of providing assistance to veterans and their dependents, to specify that the Department (DVA), rather than the Board of Veterans Affairs, is to determine the "extent" and "conditions" of such assistance. 2011 Wisconsin Act 36 vested much of the authority for making policy as it relates to veterans assistance with the Secretary of the Department of Veterans Affairs, rather than the Board of Veterans Affairs. The change in this item would make the "policy of the state" provision consistent with the Act 36 changes.

No position or funding changes are included with this item. If and when a transfer plan is submitted and approved by Governor, position and funding changes would be made at that time. [Funding of approximately \$3.1 million with 37.0 FED positions annually associated with this

program are not included under either agency in the bill.]

Joint Finance/Legislature: Delete provision.

6. TRANSFER INFORMATION TECHNOLOGY INFRA-STRUCTURE POSITIONS TO DOA AND DELETE VACANCIES

Positions	
PR	- 10.00

Governor/Legislature: Transfer 4.0 information technology infrastructure positions and incumbent employees from DWD to the Department of Administration (DOA). Delete 6.0 vacant positions in DWD "to reflect infrastructure functions that have transitioned to the Department of Administration." Positions would be transferred or deleted from the following appropriations: (a) interagency and intra-agency agreements (0.15 position); and (b) administrative services (9.85 positions). Funding associated with the positions (\$1,068,600 PR annually) would not be reduced, but rather reallocated to supplies and services to pay DOA for information technology services provided.

On the effective date of the bill, 4.0 positions and incumbent employees performing duties "primarily related to infrastructure," as determined by the Secretary of DOA, would be transferred from DWD to DOA. The employees would retain the rights and status they held at DWD before the transfer. Permanent employees would not be required to serve a probationary period. [See "Administration -- Transfers."]

[Act 55 Section: 9151(6)]

7. CONSOLIDATE MARKETING SERVICES IN TOURISM [LFB Paper 627]

	Governor		Jt. Finance/Leg.		Net Change	
	(Chg. to Base)		(Chg. to Gov)			
	Funding	Positions	Funding	Positions	Funding	Positions
FED	\$0	- 2.00	-\$104,200	0.00	-\$104,200	- 2.00

Governor: Delete 2.0 positions identified by the administration as being generally related to marketing or communications. Two document production assistant positions would be deleted from the federal workforce investment and assistance appropriation. Associated funding (\$52,100 FED annually) would be reallocated from permanent position salaries and fringe benefits to supplies and services.

The provision is intended to consolidate various functions related to marketing of the state or state agency services in the Department of Tourism, which currently markets the state as a destination for tourists and other travelers. Tourism would be provided staffing and funding for an Office of Marketing, and Tourism would charge agencies for marketing services. The bill would not provide for the transfer of any incumbent employees to Tourism. Additional information on the Office of Marketing is available under "Tourism."

Joint Finance/Legislature: Modify the Governor's recommendation by deleting \$52,100

annually associated with the positions.

8. TRANSFER VACANT POSITION TO DEPARTMENT OF ADMINISTRATION FOR INFORMATION TECHNOLOGY PROCUREMENT [LFB Paper 113]

	Governor		Jt. Finance/Leg.		Net Change	
	(Chg. to Base)		(Chg. to Gov)			
	Funding	Positions	Funding	Positions	Funding	Positions
PR	-\$197,600	- 1.00	\$197,600	1.00	\$0	0.00

Governor: Transfer 1.0 position (currently vacant) to the Department of Administration for strengthening information technology and services procurement. Delete \$98,800 annually from the agency's administrative services appropriation associated with the position.

Joint Finance/Legislature: Delete provision. [See "Administration -- Transfers."]

9. FEDERAL APPROPRIATIONS REESTIMATE

FED	\$3,396,500
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Governor/Legislature: Provide \$2,041,100 in 2015-16 and \$1,355,400 in 2016-17 to align federal expenditure authority with the amount of revenue that DWD estimates will be deposited into appropriations. The adjustments are as follows:

<u>Appropriation</u>	<u>2015-16</u>	<u>2016-17</u>
Workforce investment and assistance	\$2,936,200	\$2,041,200
Promise grant funding	390,800	600,100
Unemployment administration	<u>-1,285,900</u>	<u>-1,285,900</u>
Total	\$2,041,100	\$1,355,400

10. ELIMINATE LONG-TERM VACANCIES [LFB Paper 733]

	Governor		Jt. Finance/Leg.		Net Change	
	(Chg. to Base)		(Chg. to Gov)			
	Funding	Positions	Funding	Positions	Funding	Positions
FED	\$0	- 0.25	-\$26,400	0.00	-\$26,400	- 0.25
PR	<u>0</u>	<u>- 0.46</u>	<u>- 47,800</u>	<u>0.00</u>	<u>- 47,800</u>	<u>- 0.46</u>
Total	\$0	- 0.71	-\$74,200	0.00	-\$74,200	- 0.71

Governor: Delete 0.71 positions annually to reflect the elimination of long-term vacant positions under the bill. The reductions would include 0.25 FED position and 0.46 PR position annually. Position reductions are associated with positions that have been vacant for 12 months or more.

Joint Finance/Legislature: Modify the Governor's recommendation by deleting \$23,900 PR and \$13,200 FED annually associated with the 0.71 positions.

11. LAPSE REQUIREMENT

Governor: Specify that the 2013 Act 145 requirement that DWD lapse \$2,673,000 to the general fund from the unencumbered balances of GPR and PR appropriations in 2015-16 would also apply to 2016-17. [See "Budget Management and Compensation Reserves."]

Joint Finance/Legislature: Delete \$2,673,000 in 2015-16 to correct a double-count of the first year lapse amount in the state budget system.

[Act 55 Section: 4749]

12. DWD AND DEPARTMENT OF CORRECTIONS OFFENDER REENTRY AND ASSESSMENT INITIATIVE

Joint Finance/Legislature: Require that DWD align its workforce development activities under the federal Workforce Innovation and Opportunity Act, 29 USC 3101 to 3361, with Department of Corrections' (DOC) initiatives to reintegrate offenders into the community by doing all of the following: (a) train staff of the DOC in the use of assessment tools to assess the educational and vocational needs and skills of offenders who are incarcerated; (b) provide in its guidelines for the development of local plans under 29 USC 3123 a specific requirement that local workforce development boards established under 29 USC 3122 outline in their local plans how they will work with local and statewide offender reentry initiatives supported by the DOC; (c) appoint a representative of the DOC to serve on any subcommittee of the state workforce development board established under 29 USC 3111 that is responsible for the planning and operation of, and other issues relating to, the state workforce development system to ensure that workforce development programs made available through that system provide workforce development activities serving offenders; and (d) integrate offender reentry initiatives supported by the DOC with DWD's job center network to ensure that offenders are aware of the comprehensive career planning, job placement, job training, and other resources available to them through the job center network.

[Act 55 Section: 3104e]

13. LABOR AND INDUSTRY REVIEW COMMISSION

Joint Finance/Legislature: Delete the Labor and Industry Review Commission (LIRC) funding (\$3,612,000 annually), positions and appropriations under DWD and create LIRC's appropriations separately under Chapter 20.427 of the schedule. [See "Labor and Industry Review Commission."]

	Funding	Positions
GPR	- \$531,000	- 1.30
FED	- 5,138,800	- 20.50
SEG	- 1,554,200	- 4.70
Total	- \$7,224,000	- 26.50

[Act 55 Sections: 146m, 666m, 735, 741m, 918m, 3000, and 3673m]

14. OPT-OUT OF ONE DAY OF REST IN SEVEN

Joint Finance/Legislature: Permit an employee to state in writing that he or she voluntarily chooses to work without one day of rest in seven. Specify the provision first apply to union contracts on the day the collective bargaining agreement expires, or is extended, modified, or renewed, whichever comes first. Under prior law, every factory or mercantile employer was required to allow each employee 24 hours of rest in every consecutive seven days, except for certain emergency circumstances. The provision does not apply to janitors, security staff, bakeries, restaurants, hotels, and certain dairy and agricultural plants.

[Act 55 Sections: 3078bg and 9351(4u)]

15. ELIMINATE THE LABOR AND MANAGEMENT COUNCIL

Joint Finance/Legislature: Eliminate DWD's Labor and Management Council. Under current law, DOA proposes the elimination of inactive boards, councils, or commissions with the submission of its biennial agency budget request. In its 2015-17 biennial budget request, DOA proposed the elimination of the boards and councils which had not met for at least one year, from September, 2013, to September, 2014.

The Labor and Management Council was created to advise DWD about sponsoring labor and management conferences and meetings and promoting positive relations between labor and management. [See "Administration -- General Agency Provisions."]

16. STATUTORY MINIMUM WAGE REQUIREMENT

Joint Finance/Legislature: Repeal references to and provisions for a "living wage", including the provision allowing DWD to determine the living wage, and replace them with a "minimum wage". Further, statutorily set most minimum wage levels currently provided in administrative rule DWD 272. Establish in the statutes the allowance against the minimum wage that an employer who provides room and board for an employee may take at the levels previously set by DWD rule. Further, establish in the statutes similar employee classification definitions as provided in DWD rules.

Specify that the minimum wage for general employees, minors and agricultural employees is \$7.25 per hour. Provide that if an employer furnishes an employee with meals or lodging, the employer may deduct the following amounts from the wages of the employee: (a) for lodging, \$58 per week or \$8.30 per day and (b) for meals, \$87 per week or \$4.15 per meal. Define "agricultural employee" to mean an employee who is employed in the operation of farm premises, as described in s. 102.04 (3). Define "minor employee" to mean a person under age 18 who is paid at the applicable minimum wage rate for minors.

Specify that the minimum wage for an opportunity employee is \$5.90 per hour. Provide that if an employer furnishes an opportunity employee with meals or lodging, the employer may deduct the following amounts from the wages of the employee: (a) for lodging, \$47.20 per week

or \$6.75 per day and (b) for meals, \$70.80 per week or \$3.35 per meal. Define “opportunity employee” to mean a person under 20 years of age who is in the first 90 consecutive days of employment with his or her employer.

Specify that the minimum wage for a counselor at a seasonal recreational or educational camp, including a day camp, is \$350 per week if meals and lodging are not furnished, \$265 per week if only meals are furnished, and \$210 per week if both meals and lodging are furnished.

Specify that the minimum wage for a golf caddy is \$10.50 for caddying 18 holes and \$5.90 for caddying 9 holes.

Specify that if an employer of a tipped employee establishes by the employer’s payroll records that, when adding the tips received by the tipped employee in a week to the wages paid to the tipped employee in that week, the tipped employee receives not less than the applicable minimum wage. Provide that the minimum wage for the tipped employee is as follows: (a) for wages earned by a tipped employee who is not an opportunity employee, \$2.33 per hour and (b) for wages earned by a tipped employee who is an opportunity employee, \$2.13 per hour. Specify that if an employer furnishes a tipped employee with meals or lodging, the employer may deduct the applicable amounts from the wages of the tipped employee. Define “tipped employee” to mean an employee who in the course of employment customarily and regularly receives money or other gratuities from persons other than the employee’s employer.

Specify that DWD promulgate rules providing the minimum wage for the following: (a) an employee or worker with a disability covered under a license as defined under s. 104.07; (b) a student learner; and (c) a student employed by an independent college or university for less than 20 hours per week. In addition, specify that DWD promulgate rules that exempt from the minimum wage requirements all of the following: (a) a person engaged in casual employment in and around an employer’s home on an irregular or intermittent basis for not more than 15 hours per week; (b) a person who resides in the home of an employer who, due to advanced age or physical or mental disability, cannot care for his or her own needs, for the purpose of companionship and who spends not more than 15 hours per week on general household work for the employer; and (c) an elementary or secondary school student performing student work–like activities in the student’s school. [DWD 272 currently contains provisions addressing these categories.]

Repeal the definition of "living wage" and the provision which specifies that within 20 days after the filing of a verified complaint of any person setting forth that the wages paid to any employee in any occupation are not sufficient to enable the employee to maintain himself or herself under conditions consistent with his or her welfare, DWD investigate and determine whether there is reasonable cause to believe that the wage paid to any employee is not a living wage. [Any person could still file a complaint with DWD that a specific employee is being paid in violation of law.]

Repeal the provision which states that if, upon investigation, DWD finds that there is reasonable cause to believe that the wages paid to any employee are not a living wage, DWD appoint a wage council, selected so as fairly to represent employers, employees, and the public, to assist in its investigations and determinations. Further repeal the provision which states that

the living wage so determined be the living wage for all employees within the same class as established by the classification of the Department.

Repeal the provision which states that DWD investigate, ascertain, determine, and fix such reasonable classifications, and impose general or special orders, determining the living wage. Also, repeal the provision which states that in determining the living wage, the Department may consider the effect that an increase in the living wage might have on the economy of the state, including the effect of a living wage increase on job creation, retention, and expansion, on the availability of entry-level jobs, and on regional economic conditions within the state.

Further, include technical modifications related to the fine for intimidating a witness and the definition of a minimum wage violation.

Provide that these provisions take effect on the first day of the first month beginning after publication of the budget act (August 1, 2015).

[Act 55 Sections: 1706m, 3076d thru 3076t, 3078am, 3078b, 3078bm, 3078c, 3078cm thru 3078m, 3947g, 3947r, 4610b, 4610d, 4639m, and 9451(7f)]

17. PREVAILING WAGE

Senate/Legislature: Effective January 1, 2017, make various changes to Wisconsin's prevailing wage law as follows:

Applicability

Repeal the state prevailing wage law that applies to local projects of public works. Local governmental units affected by this repeal include counties, villages, towns, cities, school districts, municipal utilities and technical colleges.

Maintain the current requirement that prevailing wage rates be paid on state and highway projects. Retain the current project cost thresholds for state and highway projects (generally, \$48,000 for single-trade projects and \$100,000 for multiple-trade projects).

Retain the prohibition against local governmental units enacting or administering their own prevailing wage laws or similar ordinances.

Exempt from the state prevailing wage law laborers, workers, mechanics, or truck drivers that are employed to transport excavated material or mineral aggregate away from or to a project site of public works (unless delivering materials from a facility that is dedicated to the project).

Rate Calculation

Repeal all provisions directing the Department of Workforce Development (DWD) to determine prevailing wage rates and redefine "prevailing wage rate" for state projects to instead mean the applicable prevailing wage rate for an area as determined by the U.S. Department of Labor under the federal Davis-Bacon Act.

Oversight, Enforcement and Penalties

Eliminate DWD's existing role in enforcing and administering the state prevailing wage law and transfer that role to the Department of Administration (DOA). For state prevailing wage projects delete provisions which pertain to prevailing wage investigations, compliance, record keeping, inspection, and enforcement. Provide DOA with rule-making authority, including emergency rule-making authority, to administer and enforce the state prevailing wage law other than for state highway projects which are administered by the Department of Transportation (DOT).

Specify that a person who is performing prevailing wage work may request DOA or DOT (as applicable) to inspect the payroll records of any contractor, subcontractor, or agent performing work on a state prevailing wage project to ensure compliance with state law. Under existing law (pre-2017), any person may request an inspection.

Eliminate the requirement that state agencies post prevailing wage rates and hours of labor on sites, for projects other than state highway projects.

Retain enforcement and oversight of the prevailing wage law on state highway projects by DOT. Move DOT prevailing wage provisions from the purview of DWD's general employment statutes to be under DOT's general highway construction authority.

Specify that if a person contacts an employee performing prevailing wage work for the purpose of investigating compliance with the prevailing wage law, the person shall provide a written statement to the employee stating that the person is not affiliated with the DOA, DWD, DOT, or other contracting state agency (as applicable) and disclose the principal source of funding for the investigation.

Delete the provision that provides for liquidated damages for state prevailing wage projects. Under existing law, a contractor, subcontractor, or an agent that has failed to pay the applicable prevailing wage rate for state prevailing wage projects must pay, in addition to any unpaid wages or overtime wages, liquidated damages in an amount equal to 100 percent of the amount of unpaid wages. Under Act 55, a contractor who has failed to pay the applicable prevailing wage rate (for a post-2016 project) would still be obligated to pay unpaid wages or overtime wages.

Delete the provision that provides for the debarment of a contractor, subcontractor, or an agent that has failed to pay the applicable prevailing wage rate for state prevailing wage projects. Under existing law, a list is distributed to all state agencies of all persons that have been found to have failed to pay the prevailing wage rate or have paid less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor at any time in the preceding 3 years.

Other

Delete language which states that the purpose of the state prevailing wage law is to provide a uniform prevailing wage rate and prevailing hours of labor requirements throughout

the state. Instead, specify that the purpose of the state prevailing wage law is to facilitate broader participation with respect to bidding on projects of public works, ensuring that wages accurately reflect market conditions, providing local governments with the flexibility to reduce costs on capital projects, and reducing spending at all levels of government in this state.

Effective Date

Specify that these provisions take effect on January 1, 2017, and apply to any request for bids issued on or after that date. If a project is not subject to bidding requirements, the act applies to a contract that is entered into on or after that date.

[Act 55 Sections: 380n, 453xm, 1948y, 1991sd thru 1991sv, 2560p, 2569s, 3075p, 3077b thru 3077np, 3078cd, 3078ch, 3080p, 3135c thru 3135i, 3579p, 3621p, 3621v, 4726c thru 4726w, 4740b, 9151(1q), 9351(3q), and 9451(3q)]

Worker's Compensation

1. TRANSFER OF WORKER'S COMPENSATION DIVISION FUNCTIONS TO OCI AND DHA [LFB Paper 735]

	Governor (Chg. to Base)		Jt. Finance/Leg. (Chg. to Gov)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions
GPR	- \$1,050,000	0.00	\$1,050,000	0.00	\$0	0.00
PR	- 230,400	- 2.70	158,400	0.70	- 72,000	- 2.00
SEG	<u>- 60,133,600</u>	<u>- 103.30</u>	<u>59,844,600</u>	<u>67.30</u>	<u>- 289,000</u>	<u>- 36.00</u>
Total	- \$61,414,000	- 106.00	\$61,053,000	68.00	- \$361,000	- 38.00

Governor: Delete \$525,000 GPR, \$115,200 PR with 2.7 PR positions, and \$30,066,800 SEG with 103.3 SEG positions annually. Further, transfer administrative responsibilities of DWD relating to worker's compensation to the Office of the Commissioner of Insurance (OCI) which would include enforcement of the requirement that employers are insured for their worker's compensations liability; granting exemptions from that duty to insure to self-insured employers; administering the self-insured employers fund; administering the uninsured employers fund; and administering the work injury supplemental benefits fund. Transfer the adjudication responsibilities of DWD relating to disputed worker's compensation claims to the Division of Hearings and Appeals (DHA) in the Department of Administration (DOA). While the bill would specify the transfers to be effective January 1, 2016, the funds are transferred on July 1, 2015. The administration has indicated January 1, 2016 was intended.

Appropriation Changes. Create a new subsection in OCI's appropriation section entitled, worker's compensation administration. In this section, create three separate appropriations: auxiliary services, local agreements, and interagency and intra-agency agreements.

Transfer the following appropriations from DWD to OCI: worker's compensation; federal moneys, worker's compensation operations fund; administration, worker's compensation operations fund; contracts, worker's compensation operations fund; uninsured employers program; administration, self-insured employers liability fund, uninsured employers fund; payments, work injury supplemental benefit fund, and special death benefit.

Fund the Labor and Industry Review Commission (LIRC) from the newly created worker's compensation operations fund; administration appropriation under OCI. LIRC would remain an independent agency of the State of Wisconsin and would remain attached to DWD for limited administrative purposes.

Advisory Committees and Councils. Transfer the Worker's Compensation Advisory Council (WCAC) from DWD to OCI. The WCAC would be appointed by the Commissioner of Insurance (rather than DWD Secretary currently) to consist of a designated employee of OCI as chairperson. The Council would continue to consist of five representatives of employers, and five representatives of employees, and three representatives of insurers authorized to do worker's compensation insurance business in Wisconsin as nonvoting members of the council. Specify that the WCAC shall advise OCI (rather than DWD) in matters concerning Chapter 102 of the Wisconsin statutes (workers compensation).

Transfer the Self-Insurers Council from DWD to OCI. The Self-Insurers Council would consist of five members appointed by the Commissioner of Insurance (rather than DWD Secretary currently) for three-year terms.

Transfer the Health Care Provider Advisory Committee from DWD to OCI. Specify that, the Office (rather than DWD currently) establish an advisory committee composed of health care providers providing treatment under worker's compensation to advise OCI and the WCAC on amending of certain rules regarding necessity of treatment disputes and standards.

Disputes Concerning Compensation Claims. Under current law, DWD performs certain adjudicatory functions relating to worker's compensation. Those adjudicatory functions include adjudicating disputed worker's compensation claims, adjudicating disputes over the reasonableness of fees charged for health services provided to an injured employee and of the amount charged for prescription drugs dispensed to an injured employee (reasonableness of fees), and adjudicating disputes over the necessity of treatment provided to an injured employee (necessity of treatment). Transfer the adjudicatory functions of DWD relating to disputed worker's compensation claims to the Division of Hearings and Appeals in DOA (DHA). Specify disputes over the reasonableness of fees charged by health service providers, the reasonableness of charges for prescription drugs, as well as disputes over the necessity of treatment, would be decided by OCI.

Other Provisions. Specify that OCI's report and examination authority is used as a means to examine the books and records of any insurer insuring the liability for compensation of an employer in Wisconsin.

Create a forfeiture provision within OCI for a violation of a statute or rule where the violator shall forfeit to the state not more than \$1,000 for each infraction. Specify that OCI may

levy such penalties on whoever violates, intentionally aids a person in violating, or knowingly permits a person over whom he or she has authority to violate an insurance statute which prohibits employers from discriminating against an employee or refusing to rehire an employee because of a claim or attempt to claim compensation benefits. Under current law, the forfeiture range for this infraction is not less than \$50 nor more than \$500.

Create a definition in the citation procedure section of the worker's compensations statutes of "deputy" to mean any person employed by OCI who is designated as a deputy, who possesses special, technical, scientific, managerial or personal abilities or qualities in matters within the jurisdiction of the office, and who may be engaged in the performance of duties under the direction of the commissioner, calling for the exercise of those abilities or qualities.

Require that the administrator of DHA assign a hearing examiner to preside over any hearing or review of a worker's compensation claim or other workers compensation dispute. Provide that OCI shall notify DHA of every pending hearing to which the administrator of DHA is required to assign a hearing examiner after OCI is notified that a hearing on the matter is required.

Specify that the administrator of DHA may set the fees to be charged for any services rendered to OCI by a hearing examiner. The fee would cover the total cost of the services.

Reduce the number of DWD unclassified division administrators from nine to eight.

Transfer of Administrative Functions. Provide that the DWD assets, liabilities, tangible personal property, records, pending matters, contracts, administrative rules, and orders primarily related to the administrative functions of the Division of Worker's Compensation in DWD, as determined by the Secretary of DOA, would become the responsibility of OCI on January 1, 2016. The transferred rules, as determined by the Secretary of DOA, would remain in effect until their specified expiration dates or until amended or repealed by OCI. Provide that all positions and all incumbent employees holding those positions in DWD that relate to the administrative functions of the Division of Worker's Compensation in DWD, as determined by the Secretary of DOA, are transferred to OCI on January 1, 2016. Employees transferred under the provision would have the same rights and status related to state employment relations under Chapters 111 and 230 of the statutes. Transferred employees who have attained permanent status would not be required to serve a probationary period.

Transfer of Adjudicatory Functions. Provide that the DWD assets, liabilities, tangible personal property, records, pending matters, contracts, administrative rules, and orders primarily related to the adjudicatory functions of the Division of Worker's Compensation in DWD, as determined by the Secretary of DOA, would become the responsibility of DHA on January 1, 2016. The transferred rules, as determined by the Secretary of DOA, would remain in effect until their specified expiration dates or until amended or repealed by DHA. Provide that all positions and all incumbent employees holding those positions in DWD that relate to the adjudicatory functions of the division of worker's compensation in DWD, as determined by the Secretary of DOA, are transferred to DHA on January 1, 2016. Employees transferred under the provision would have the same rights and status related to state employment relations under Chapters 111 and 230 of the statutes. Transferred employees who have attained permanent

status would not be required to serve a probationary period.

Transfer of Councils. Provide that DWD tangible personal property, records, and contracts primarily related to the WCAC and the Self-Insurers Council functions in DWD, as determined by the Secretary of DOA, would become the responsibility of OCI on January 1, 2016.

Net Transfer. Under the bill, in 2016-17 there would be a net reduction of 5.0 worker's compensation related staff and approximately \$3.2 million in available resources.

	Funding (2016-17)			Positions		
	<u>DWD</u>	<u>OCI</u>	<u>DHA</u>	<u>DWD</u>	<u>OCI</u>	<u>DHA</u>
GPR	-\$525,000	\$525,000	\$0	0.00	0.00	0.00
PR	-115,200	120,300	3,686,300*	-2.70	0.70	33.00
SEG	<u>-30,066,800</u>	<u>26,817,000</u>	<u>0</u>	<u>-103.30</u>	<u>67.30</u>	<u>0.00</u>
Total	-\$30,707,000	\$27,462,300	\$3,686,300	-106.00	68.00	33.00

*Program revenue funding provided to DHA reflects the level of charges expected to be assessed to OCI for hearing costs.

Joint Finance/Legislature: Delete the transfer of workers compensation administrative functions from DWD to OCI.

Approve the transfer of most adjudicatory functions from DWD to DHA. The transfer would be effective January 1, 2016. Specify that a minimum of 18 administrative law judges would be transferred to DHA to hear worker's compensation cases. Further, specify that at least 18 worker's compensation ALJs devote a minimum of 80% of their time on workers compensation duties. Specify that six workers compensation ALJs and two legal support staff remain at DWD to decide claims where a formal hearing is not scheduled and to assist in effective workers compensation administration. Further, delete \$144,500 SEG and \$36,000 PR annually associated with 5.0 vacant position deletions.

Under Act 55, the fiscal change to DWD and to the DOA Division of Hearings and Appeals would be as follows.

	Funding (2016-17)		Positions	
	<u>DWD</u>	<u>DHA</u>	<u>DWD</u>	<u>DHA</u>
PR	-\$36,000	\$3,686,300*	-2.00	33.00
SEG	<u>-144,500</u>	<u>0</u>	<u>-36.00</u>	<u>0.00</u>
Total	-\$180,500	\$3,686,300	-38.00	33.00

*Program revenue funding provided to DHA reflects the level of charges expected to be assessed to DWD for hearing costs.

In addition, incorporate the following erratum identified by the administration:

Provide that DWD and DHA would generally jointly administer the state workers compensation law. DWD would primarily be responsible for worker's compensation claims where a formal hearing is not scheduled, and DHA would adjudicate contested claims.

Modify statutory sections within the state's Worker's Compensation Act (Chapter 102) that refer to both litigated and nonlitigated worker's compensation claims to apply to both DWD and DHA. [Under the corrected bill, both DWD and DHA would be authorized to issue orders, make determinations, approve fees, award compensation, file complaints, and review, set aside, modify or confirm a compromise or any other stipulation of settlement of a worker's compensation claim.]

Direct DWD to have and maintain on its staff such examiners as are necessary to mediate claims and to assist in the effective administration of Chapter 102.

Specify that DHA have the right to review, set aside, modify or confirm compromise agreements for litigated cases (compromise cases where the application is ready to be scheduled for a hearing).

Specify that DWD have the right to review, set aside, modify or confirm compromise agreements for nonlitigated cases (compromise cases where the application is not ready to be scheduled for a hearing).

Veto by Governor [C-41]: Delete provision that requires at least 18 DOA Division of Hearings and Appeals examiners to devote not less than 80 percent of their work time to hear workers compensation cases.

[Act 55 Sections: 1412d thru 1414, 2727 thru 2744d, 2754d thru 2769, 2770, 2772d thru 2830d, 2831d thru 2942d, 2944d, 2952 thru 2991d, 2995d, 2996d, 3587, 3588d, 3591d, 3594d, 9151(2), and 9451(1v)]

[Act 55 Vetoed Section: 2830e]

2. TERMINATION OF SUPPLEMENTAL BENEFIT REIMBURSEMENTS AND CHANGES TO THE UNINSURED EMPLOYERS FUND [LFB Paper 736]

Governor/Legislature: Under current law, every employee who is receiving workers compensation for permanent total disability or continuous temporary total disability for more than 24 months after the date of injury resulting from an injury that occurred prior to January 1, 2001, is entitled to receive supplemental benefits that are payable in the first instance by a self-insured employer or insurer, but the employer or insurer then is entitled to reimbursement for those supplemental benefits paid from the work injury supplemental benefit fund (WISBF). The WISBF is funded through statutory assessments against insurance carriers and self-insured employers for certain specified injuries and death claims. However, as of May 14, 2013, reimbursement to employers and insurers of supplemental benefit payments was reduced to \$0 pursuant to state statute section 102.65(4) which states that the DOA Secretary, in consultation

with the Worker's Compensation Advisory Council, is obligated to reduce payments from the WISBF if known claims exceed 85 percent of the cash balance in that fund and the Secretary determines that the cash balance in the WISBF may become inadequate to fund all claims.

Supplemental Benefit Reimbursement Changes for Employer

Terminate reimbursements for supplemental benefits paid by self-insured employers beginning on the effective date of the bill.

Supplemental Benefit Reimbursement Changes for Insurers

Terminate reimbursements for supplemental benefits paid by insurers from the WISBF beginning on the effective date of the bill. Provide that, an insurer paying supplemental benefits would instead be entitled to annual reimbursement from the workers compensation operations fund (WCOF). Under current law, to receive reimbursement, an insurer must file a claim with the Department no later than 12 months after the end of the year in which the supplemental benefits were paid and the claim must be approved by DWD. After the expiration of the 12 month deadline for filing a supplemental benefit claim the Department would determine the total amount of all claims filed by the deadline and use that total to determine the amount to be collected from each insurer.

Specify that DWD collect from each insurer the proportion of reimbursement approved by the Department for supplemental benefits paid in the year before the previous year that the total indemnity paid or payable by the carrier in worker's compensation cases initially closed during the preceding calendar year (other than for increased, double, or treble compensation) bore to the total indemnity paid in cases closed the previous calendar year by all carriers (other than for increased, double, or treble compensation). The maximum amount that DWD may collect in a calendar year is \$5,000,000. If the amount determined collectible in a calendar year is \$5,000,000 or less, DWD must collect that amount. If the amount determined collectible in a calendar year exceeds \$5,000,000, DWD must collect \$5,000,000 in the year in which the determination is made and, subject to the maximum amount collectible of \$5,000,000 per calendar year, must collect the excess in the next calendar year or in subsequent calendar years until that excess is collected in full. DWD must require each insurer to make these payments for each fiscal year on such dates as the Department prescribes. Specify that, all amounts be deposited in the WCOF, and used to provide reimbursement to insurers paying supplemental benefits.

Specify that, DWD pay a claim for reimbursement approved by the Department by no later than 16 months after the end of the year in which the claim was received. The maximum amount that the Department may pay in a calendar year is \$5,000,000. If the amount determined payable in a calendar year exceeds \$5,000,000, DWD would pay the excess in the next calendar year or in subsequent calendar years until that excess is paid in full. The Department would pay claims for reimbursement in the chronological order in which those claims are received.

Specify that no reimbursement would be paid to insurers for employees injured beginning on January 1, 2016 (although the bill would not affect current law provisions which specify that reimbursements only apply for injuries sustained prior to January 1, 2001).

Uninsured Employers Fund (UEF) Changes

Under current law, if an employee of an employer that is not insured for worker's compensation (uninsured employer) suffers an injury for which the uninsured employer is liable, DWD, from the uninsured employers fund (UEF), or, if the Department obtains excess or stop-loss reinsurance from a reinsurer, the reinsurer, pays benefits to the injured employee that are equal to the worker's compensation owed by the uninsured employer. The UEF is funded through penalties assessed against employers for illegally operating a business without worker's compensation insurance as well as reimbursement payments from uninsured employers for benefit payments made by the UEF. The UEF applies only to injuries occurring on or after July 1, 1996. UEF claims filed for injuries occurring prior to July 1, 1996, are not valid.

Specify that DWD must pay a claim of an employee of an uninsured employer in excess of \$1,000,000 from the UEF in the first instance. If the claim is not covered by excess or stop-loss reinsurance, the Secretary of DOA must transfer from the WCOF administration appropriation to the UEF an amount equal to the amount by which payments from the UEF on the claim are in excess of \$1,000,000. Each calendar year DWD would file with the DOA Secretary a certificate setting forth the number of claims in excess of \$1,000,000 in the preceding year paid from the UEF, the payments made from the UEF on each such claim in the preceding year, and the total payments made from the UEF on all such claims. Based on that information, the DOA Secretary would determine the amount to be transferred in that calendar year. The maximum amount that the DOA Secretary could transfer in a calendar year would be \$500,000. If the amount is \$500,000 or less, the DOA Secretary would transfer the amount determined. If the amount exceeds \$500,000, the Secretary of DOA would transfer \$500,000 in the calendar year in which the determination is made and, subject to the maximum transfer amount of \$500,000 per calendar year, would transfer that excess in the next calendar year or in subsequent calendar years until that excess is transferred in full. Under the bill, these provisions would first apply to claims paid from the UEF in 2014.

[Act 55 Sections: 735, 2943, 2945 thru 2951, 2992, 2997 thru 3018, 9351(1)&(2), and 9451(1)]

3. WORKER'S COMPENSATION COVERAGE FOR POSTSECONDARY STUDENTS

Governor/Legislature: Extend provisions in Wisconsin's workers compensation law to a student of an institution of higher education.

Current law states that a student of a public or private school, while he or she is engaged in performing services as part of a school work training, work experience, or work study program, and who is not on the payroll of an employer that is providing the work training or work experience or who is not otherwise receiving compensation on which a worker's compensation carrier could assess premiums on that employer, is an employee of a school district or private school, that elects to name the student as its employee. A school district or private school may elect to name as its employee a student described by an endorsement on its policy of worker's compensation insurance or, if the school district or, private school, is exempt from the duty to

insure, by filing a declaration with the Department naming the student as an employee of the school district or private school. No student of a public or private school, as an employee of the school district or private school, and who makes a claim for compensation, may make a claim or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose.

The bill would add students of an "institution of higher education" to the above provision. "Institution of higher education" would mean an institution within the University of Wisconsin System, a technical college, a tribally controlled college, any private trade, correspondence, business, or technical school as approved by the Educational Approval Board (eliminated under the bill), or a private, nonprofit institution of higher education located in this state.

[Act 55 Sections: 2746 thru 2751, and 2878]

4. ELECTRONIC RECORDINGS

Governor: Require that all testimony given at worker's compensation hearings shall be recorded by electronic means rather than by a stenographer. Specify that testimony need not be transcribed, unless the examiner conducting the hearing orders otherwise. A copy of the recording, or a transcript if ordered, would be available upon payment of a fee specified in administrative rule. Under current law, all testimony given at worker's compensation hearings must be taken down by a stenographer, except that in the case of an emergency, testimony may be recorded. [See "Administration" for the full summary of this item]

Joint Finance/Legislature: Delete provision as a non-fiscal policy item.

5. PROVIDE NOTICES BY ELECTRONIC DELIVERY

Governor: Allow for the electronic delivery of workers compensation applications for hearing, notices of hearing, and orders to pay an award of compensation. Under current law, notices and orders must be sent by mail.

Joint Finance/Legislature: Delete provision as a non-fiscal policy item.

Unemployment Insurance

1. UI INTEREST PAYMENT

GPR	- \$14,000,000
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Governor/Legislature: Delete \$7,000,000 annually to reflect the July 1, 2015, repeal, under 2013 Act 20, of a GPR appropriation to pay unemployment insurance interest costs to the

federal government. It is expected that interest owed on federal advances will be paid in full before June 30, 2015.

2. DRUG TESTING FOR UI PROGRAM [LFB Paper 740]

GPR	\$500,000
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Governor: Create a substance abuse treatment biennial appropriation and provide \$500,000 beginning in 2016-17 to fund substance abuse treatment to claimants for unemployment insurance (UI). Further, create a controlled substances testing GPR biennial appropriation for testing of controlled substances and for related expenses, although no funds would be appropriated for 2015-17.

Under current federal law, a state may require a claimant to submit to a test for controlled substances as an eligibility condition to receive unemployment benefits if the claimant: (a) was terminated from employment with his or her most recent employer because of the unlawful use of controlled substances; or (b) is an individual for whom suitable work, as defined under state law, is only available in an occupation that regularly conducts drug testing, as determined in regulations issued by the United States Secretary of Labor (as of February 20, 2015, final federal regulations have not been issued).

Definitions

"Job skills assessment" would mean an assessment conducted by DWD for claimants who misuse controlled substances which claimants must satisfy in order to be considered in full compliance.

"Occupation that regularly conducts drug testing" would mean an occupation identified in the regulations issued by the federal secretary of labor.

"Screening" would mean the screening process created by the Department to determine whether a claimant should be required to submit to a test for the presence of controlled substances.

"Substance abuse treatment program" would mean the program provided by DWD for claimants who misuse controlled substances and that specify criteria that a claimant must satisfy in order to be considered in full compliance with requirements of the substance abuse treatment program.

Program Parameters

Require DWD to establish a program to test claimants who apply for regular unemployment benefits for the presence of controlled substances and, under the program, do all of the following: (a) establish a process to test claimants for the presence of controlled substances and adhere to any applicable federal requirements regarding drug testing, (b) create and provide a substance abuse treatment program for claimants who misuse controlled substances and specify criteria that a claimant must satisfy in order to be considered in full compliance with the program, (c) create a screening process for determining whether a claimant should be required to submit to a test for the presence of controlled substances, (d) create and

conduct job skills assessments for claimants who misuse controlled substances and specify criteria that a claimant must satisfy in order to be considered in full compliance with the requirements of the assessment, and (e) promulgate rules identifying occupations for which drug testing is regularly conducted in the state.

When a claimant applies for regular benefits, require DWD to: (a) determine whether the claimant is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing (an occupation identified by the federal Secretary of Labor) and, if so, conduct a screening on the claimant; (b) determine whether the claimant is an individual for whom suitable work is only available in an occupation for which drug testing is regularly conducted in this state (an occupation identified by DWD by rule) and, if so, conduct a screening on the claimant if a screening is not already required; and (c) if a screening indicates that the claimant should be required to submit to a test for the presence of controlled substances, require that the claimant submit to such a test.

Drug Testing Program

Specify that, if a claimant is required to submit to a test for the presence of controlled substances and the claimant declines to submit to such a test, the claimant is ineligible for UI benefits for 52 weeks after the date of the declining or until the claimant qualifies for benefits in a subsequent benefit year, whichever occurs later.

Specify that, if a claimant who is required to submit to a test for the presence of controlled substances submits to the test and does not test positive for any controlled substance or the claimant presents evidence satisfactory to the Department that the claimant possesses a valid prescription for each controlled substance for which the claimant tests positive, the claimant may receive benefits if otherwise eligible and may not be required to submit to any further test for the presence of controlled substances until a subsequent benefit year.

Specify that, if a claimant who is required to submit to a test for the presence of controlled substances submits to the test and tests positive for one or more controlled substances without presenting evidence satisfactory to the Department that the claimant possesses a valid prescription for each controlled substance for which the claimant tested positive, the claimant is ineligible for benefits until 52 weeks after the date of the test or until the claimant qualifies for benefits in a subsequent benefit year, whichever occurs later. However, the claimant may maintain his or her eligibility for benefits by enrolling in the substance abuse treatment program and undergoing a job skills assessment. Such a claimant remains eligible for benefits, if otherwise eligible, for each week the claimant is in full compliance with any requirements of the substance abuse treatment program and job skills assessment, as determined by DWD in accordance with the rules promulgated by the Department.

Preemployment Drug Testing Program

Specify that, an employer may, in accordance with the rules promulgated by the Department, voluntarily submit to DWD the results of a test for the presence of controlled substances that was conducted on an individual as preemployment screening or notify the Department that an individual declined to submit to such a test as a condition of employment,

along with information necessary to identify the individual. Upon receipt of any such results of a test conducted and certified in a manner approved by DWD or notification that an individual declined to submit to such a test, the Department shall determine whether the individual is a claimant receiving benefits. If the individual is a claimant receiving benefits, the Department shall, in accordance with administration rules promulgated by DWD, use that information for purposes of determining eligibility for benefits.

Create a rebuttable presumption that an employee has failed, without good cause, to accept suitable work when offered if the employee declines to submit to a test for the presence of controlled substances in a test conducted on the employee as preemployment screening or the employee tests positive for one or more controlled substances in such a test without evidence of a valid prescription, as evidenced by a report submitted to DWD by an employing unit. If the employee declines to submit to such a test, the employee shall be ineligible for benefits as if the employee had declined to submit to a test, beginning with the week in which the Department receives the report. If the employee tests positive in such a test without evidence of a valid prescription, the employee shall be ineligible for benefits as if the employee had tested positive, beginning with the week in which the Department receives the report, unless agreeing to enroll in the substance abuse treatment program and undergoing a job skills assessment. Require DWD to promulgate rules specifying how a claimant may overcome the presumption in this paragraph. Require the Department to charge to the UI fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements whenever an employee of that employer fails, without good cause, to accept suitable work offered by that employer.

Application

Provide that the drug testing program and preemployment drug testing program would not take effect until the Department has promulgated certain rules to establish the programs. Direct DWD to submit to the Legislative Reference Bureau for publication in the Wisconsin administrative register a notice identifying the date on which the program will be implemented. The DWD Secretary could waive compliance with any provision creating the UI drug testing program if the Secretary determines that waiver of the provision is necessary to permit continued certification of the UI program for grants to the state under Title III of the federal Social Security Act or for maximum credit allowances to employers under the federal Unemployment Tax Act.

Scope Statements for Rules

DWD would be required to present the statements of scope of the administrative rules to the Governor for approval no later than the 180th day after the effective date of the bill.

Emergency Rule Authority

Provide that DWD may promulgate certain rules, as directed by the bill, as emergency rules without the finding of an emergency for the period before the effective date of any corresponding permanent rules but not to exceed the general statutory period for emergency rules (150 to 270 days).

Joint Finance/Legislature: Modify the Governor's recommendations as follows:

- a. Delete the separate treatment appropriation. Further, transfer \$250,000 GPR from 2016-17 to 2015-16 for a substance abuse testing and substance abuse treatment biennial appropriation. [\$250,000 GPR would be provided each year for testing and treatment, rather than \$500,000 beginning in 2016-17 for treatment under the original bill.]
- b. Delete language that specifies a 52 week benefit ineligibility period for claimants who test positive or refuse a test for controlled substances. Specify that DWD promulgate rules identifying a period of ineligibility that must elapse or a requalification requirement that must be satisfied, or both, in order for an individual who becomes ineligible for benefits to again qualify for benefits.
- c. Specify that if the rules require that a claimant enrolled in the substance abuse treatment program submit to additional tests for the presence of controlled substances following the initial test, the rules allow the claimant to have at least one more positive test result following the initial test without, on that basis, being considered not to be in full compliance with the requirements of the substance abuse treatment program.
- d. Specify that DWD charge UI benefit payments for individuals in the drug treatment and skills assessment program to the balancing account, rather than the employer account.
- e. Specify that all information relating to a claimant's enrollment in the substance abuse treatment program shall, subject to and in accordance with any rules promulgated by the Department, be confidential and not subject to the right of inspection or copying under s. 19.35(1) of the statutes [open records].
- f. Require that the results of the initial screening must provide a reasonable suspicion that the claimant has engaged in the unlawful use of controlled substances to require that the claimant submit to a test for the presence of controlled substances.
- g. Delete the term "misuse" in reference to the misuse of controlled substances and replace with "engaged in the unlawful use of" controlled substances.
- h. Delete the phrase "for which the supply of the controlled substance indicated by the prescription has not run out" in reference to the definition of a valid prescription and replace with "that has not expired."
- i. Clarify that the Department promulgate rules identifying occupations for which drug testing is regularly conducted in this state. Require that DWD notify the United States Department of Labor of the rules promulgated.
- j. Under the preemployment drug test reporting program, specify that it be "as a condition of an offer of employment" that the employer require that the employee submit to a test for the presence of controlled substances and the prospective employer "withdrew the conditional offer" after the employee either refused to submit to such a test or tested positive for one or more controlled substances.

k. Specify that DWD may contract with a third-party entity or another state agency to provide a substance abuse treatment program.

[Act 55 Sections: 726, 3111, 3112, 3115, 3116, 3119, 3120, and 9151(5)]

3. INCREASE PENALTIES FOR UI FRAUD [LFB Paper 741]

SEG-REV	\$1,450,000
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Governor: Under current law, a 15 percent surcharge (credited to the UI balancing account) is imposed on certain fraudulent overpayments made to claimants. This payment is in addition to a reduction of future benefits for acts of fraud by two, four, and eight times the weekly benefit rate, escalating with repeat offenses. A UI claimant commits fraud by providing false or inaccurate information to the Department when filing a claim for UI benefits in an effort to obtain monies to which they are not entitled. This bill would increase the penalty described above to a 40 percent surcharge on the benefit payments erroneously paid to the claimant beginning on the day after publication of the budget act.

Also, under current law, any person who knowingly makes a false statement or representation to obtain UI benefit payments may be fined not less than \$100 nor more than \$500 or imprisoned for not more than 90 days, or both. The bill would eliminate this provision and replace it with a set of graduated fines and criminal penalties for UI fraud as follows: (a) if the value of any benefits obtained does not exceed \$2,500, would be subject to a misdemeanor not to exceed a \$10,000 fine or imprisonment not to exceed nine months, or both; (b) if the value of any benefits obtained exceeds \$2,500 but does not exceed \$5,000, is guilty of a Class I felony (up to 3.5 years imprisonment and up to a \$10,000 fine); (c) if the value of any benefits obtained exceeds \$5,000 but does not exceed \$10,000, is guilty of a Class H felony (up to six years imprisonment and \$10,000); (d) if the value of any benefits obtained exceeds \$10,000, is guilty of a Class G felony (up to 10 years imprisonment and \$25,000).

These criminal penalties would take effect for violations occurring beginning on the first Sunday after publication of the budget act.

Joint Finance/Legislature: Delete the changes to criminal penalties (maintain current law).

Adopt the Governor's recommendation to increase the surcharge to 40%, but specify it begin on October 4, 2015, or on the first Sunday after publication of the bill, whichever is later. Further, specify that the current 15% surcharge would be deposited to the state's UI trust fund as required by federal law, with the additional 25% surcharge deposited to the state's program integrity fund. Under 2013 Act 36, the program integrity fund is repealed on January 1, 2034. Estimate surcharge revenues for the program integrity fund at \$470,000 in 2015-16 and \$890,000 in 2016-17.

[Act 55 Sections: 3113, 3119m, 3120m, 9351(4), and 9451(4)]

4. SUITABLE WORK DEFINITION [LFB Paper 742]

Governor: Specify that DWD must, by administrative rule, define a tiered system of what constitutes "suitable work" when a recipient of unemployment insurance is conducting a job search. Current law specifies that a claimant may refuse work for good cause and maintain eligibility for unemployment insurance benefits if the new work involved wages, hours, or other conditions that were significantly lower or less favorable than similar work in the locality, and the claimant had not had reasonable opportunity (up to six weeks) to find a new job substantially in line with the individual's prior job. The bill would require DWD to define by rule what constitutes suitable work for claimants, including to specify different levels of suitable work based upon the number of weeks that a claimant has received benefits in a given benefit year.

Joint Finance/Legislature: Modify the Governor's recommendation to clarify that the tiered levels of suitable work to be established by DWD would come after the initial six-week canvassing period - the period when claimants can refuse suitable work under 108.04(8)(d) of the statutes.

[Act 55 Sections: 3110, 3117, and 3118]

5. UI PROGRAM INTEGRITY PROGRAM

FED	\$869,800
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Joint Finance/Legislature: Increase the DWD federal UI administration continuing, all monies received appropriation by \$434,900 annually for program integrity (fraud detection) purposes to the extent allowed by federal law. The Labor and Industry Review Commission federal UI operations continuing appropriation would be reduced by the same amount.